

13F3GUGD

BIRNBAUM

1 Q. Have you reviewed any of those topics?  
2 A. I invoke my Fifth Amendment.  
3 Q. Are you prepared to testify in behalf  
4 of Dabir International Limited with respect to  
5 any of plaintiffs' 43 deposition topics?  
6 A. I invoke my Fifth Amendment.  
7 Q. Isn't it true, sir, that you're  
8 completely unprepared with respect to each and  
9 every 43 deposition topics that are listed in  
10 Exhibit 1?  
11 A. I invoke my Fifth Amendment.  
12 Q. Isn't it true, sir, that you did  
13 nothing to prepare for any of the 43 deposition  
14 topics?  
15 A. I invoke my Fifth Amendment.  
16 Q. Isn't it true, sir, that Dabir looked  
17 at no documents to prepare to testify concerning  
18 plaintiffs' 43 deposition topics?  
19 A. I invoke my Fifth Amendment.  
20 Q. Isn't it true, sir, that Dabir did not  
21 speak with anyone in order to prepare for  
22 testifying to plaintiffs' 43 deposition topics?  
23 A. I invoke my Fifth Amendment.  
24 Q. Isn't it true, sir, that Dabir  
25 International spent no time, meaning zero

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1 minutes, preparing to testify as to plaintiffs'  
2 43 deposition topics?

3 A. I invoke my Fifth Amendment.

4 Q. What steps did Dabir International  
5 take to prepare for testifying at plaintiffs'  
6 rule 30(b)(6) deposition today?

7 A. I invoke my Fifth Amendment.

8 Q. Did Dabir International review any of  
9 its documents to prepare for the deposition  
10 today?

11 A. I invoke my Fifth Amendment.

12 Q. Was there any documents that Dabir  
13 International would have liked to consult to  
14 prepare for the deposition today but did not  
15 have in its possession?

16 A. I invoke my Fifth Amendment.

17 Q. Why didn't Dabir International take  
18 any steps to prepare for the deposition today?

19 A. I invoke my Fifth Amendment.

20 Q. Why didn't Dabir International seek to  
21 educate any other person to testify on behalf of  
22 Dabir International today?

23 A. I invoke my Fifth Amendment.

24 Q. Why didn't Dabir International -- has  
25 Dabir International received any discovery

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1 requests from plaintiffs in this case, sir?  
2 A. I invoke my Fifth Amendment.  
3 Q. Isn't it true, sir, that Dabir  
4 International has received discovery requests  
5 from plaintiffs?  
6 A. I invoke my Fifth Amendment.  
7 Q. Does Dabir International intend to  
8 respond to plaintiffs' discovery requests?  
9 A. I invoke my Fifth Amendment.  
10 Q. Mr. Birnbaum, does Dabir International  
11 own any computers?  
12 A. I invoke my Fifth Amendment.  
13 Q. Does Dabir International rely on the  
14 use of computers in conducting its business?  
15 A. I invoke my Fifth Amendment.  
16 Q. Isn't it true that Dabir International  
17 does rely on computers in conducting its  
18 business?  
19 A. I invoke my Fifth Amendment.  
20 Q. Are the computers that Dabir  
21 International relies upon for conducting its  
22 business the same ones that are located at your  
23 home, Mr. Birnbaum?  
24 A. I invoke my Fifth Amendment.  
25 Q. Isn't it true, Mr. Birnbaum, that  
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- 1 Dabir International uses those same computers as  
2 you and your wife do?  
3 A. I invoke my Fifth Amendment.  
4 Q. Does Dabir International have any  
5 e-mail accounts, sir?  
6 A. I invoke my Fifth Amendment.  
7 Q. Does Dabir International own any  
8 domain names?  
9 Domain names?  
10 A. I invoke my Fifth Amendment.  
11 Q. Does Dabir International own any Web  
12 sites?  
13 A. I invoke my Fifth Amendment.  
14 Q. Mr. Birnbaum, do you use any of your  
15 personal e-mail accounts to conduct business on  
16 behalf of Dabir?  
17 A. I invoke my Fifth Amendment.  
18 Q. Isn't true, sir, that you do use your  
19 personal e-mail accounts in order to conduct  
20 business on behalf of Dabir?  
21 A. I invoke my Fifth Amendment.  
22 Q. Does Dabir International possess any  
23 documents that contain the term "Guggenheim"?  
24 A. I invoke my Fifth Amendment.  
25 Q. Does Dabir International possess any

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1 documents containing the term "Dabir"?  
2 A. I invoke my Fifth Amendment.  
3 Q. Isn't it true that Dabir possesses  
4 documents containing the term "Guggenheim"?  
5 A. I invoke my Fifth Amendment.  
6 Q. Isn't it true that Dabir International  
7 possesses documents containing the term "Dabir"?  
8 A. I invoke my Fifth Amendment.  
9 Q. Does Dabir International possess any  
10 documents containing the term "David B.  
11 Guggenheim"?  
12 A. I invoke my Fifth Amendment.  
13 Q. Isn't it true that Dabir International  
14 does possess documents containing the term  
15 "David B. Guggenheim"?  
16 A. I invoke my Fifth Amendment.  
17 Q. Has Dabir ever offered any products  
18 for sale using the term "David B. Guggenheim"?  
19 A. I invoke my Fifth Amendment.  
20 Q. Has Dabir offered any services for  
21 sale using the name David B. Guggenheim?  
22 A. I invoke my Fifth Amendment.  
23 Q. Isn't it true that Dabir has in fact  
24 used the name David B. Guggenheim in sales of  
25 products?

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- 1 A. I invoke my Fifth Amendment.  
2 Q. Isn't it true that Dabir International  
3 has used the name David B. Guggenheim in  
4 offering services for sale?  
5 A. I invoke my Fifth Amendment.  
6 Q. Is Dabir International currently using  
7 business cards that contain the term "David B.  
8 Guggenheim"?  
9 A. I invoke my Fifth Amendment.  
10 Q. Is Dabir International currently using  
11 letterhead that contains the term "David B.  
12 Guggenheim"?  
13 A. I invoke my Fifth Amendment.  
14 Q. Isn't it true that Dabir International  
15 is in fact currently using business cards  
16 containing the term "David B. Guggenheim"?  
17 A. I invoke my Fifth Amendment.  
18 Q. Isn't it true that Dabir International  
19 is currently using letterhead that contains the  
20 term "David B. Guggenheim"?  
21 A. I invoke my Fifth Amendment.  
22 Q. Mr. Birnbaum, does Dabir International  
23 Limited own an entity named Dabir Mines?  
24 A. I invoke my Fifth Amendment.  
25 Q. Isn't it true, sir, that Dabir

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1 International Limited has represented to  
2 consumers that it owns diamonds from the private  
3 collection of the Guggenheims through Dabir  
4 Mines?  
5 A. I invoke my Fifth Amendment.  
6 Q. Mr. Birnbaum, who is Joshua Simcox?  
7 A. I invoke my Fifth Amendment.  
8 Q. Isn't it true that Dabir International  
9 is familiar with Mr. Josh Simcox?  
10 A. I invoke my Fifth Amendment.  
11 Q. Has Dabir International attempted to  
12 enter into business transactions with Josh  
13 Simcox?  
14 A. I invoke my Fifth Amendment.  
15 Q. Isn't it true that Dabir International  
16 has attempted to enter into business  
17 transactions with Mr. Simcox?  
18 A. I invoke my Fifth Amendment.  
19 Q. Has Dabir International represented  
20 that it is connected to Guggenheim entities with  
21 respect to Joshua Simcox?  
22 A. I invoke my Fifth Amendment.  
23 Q. Isn't it true, sir, that Dabir  
24 International has represented to Mr. Simcox that  
25 it is connected to Guggenheim entities?

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1 A. I invoke my Fifth Amendment.  
2 Q. Mr. Birnbaum, is Dabir International  
3 familiar with a company Proximity Petroleum?  
4 A. I invoke my Fifth Amendment.  
5 Q. Does Dabir International own Proximity  
6 Petroleum?  
7 A. I invoke my Fifth Amendment.  
8 Q. Has Dabir International used the term  
9 "Guggenheim" in its dealings with Proximity  
10 Petroleum?  
11 A. I invoke my Fifth Amendment.  
12 Q. Isn't it true, sir, that Dabir  
13 International has in fact used the term  
14 "Guggenheim" in its dealings with Proximity  
15 Petroleum?  
16 A. I invoke my Fifth Amendment.  
17 Q. Mr. Birnbaum, I'm now going to give  
18 you what has been marked as Exhibit 14 to your  
19 deposition.  
20 (Exhibit 14 marked)  
21 Q. This document is titled "Irrevocable  
22 Confirmed Purchase Order." Have you seen this  
23 document before, sir?  
24 A. I invoke my Fifth Amendment.  
25 Q. This document is addressed to Dabir  
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1 International Limited. Do you see that portion  
2 of the document? It is on the first page.  
3 A. I invoke my Fifth Amendment.  
4 Q. The document also says: Attention  
5 Mr. David Guggenheim, chairman. Do you see that  
6 portion of the document?  
7 A. I invoke my Fifth Amendment.  
8 Q. So I'll ask you again, have you seen  
9 this document before, Mr. Birnbaum?  
10 A. I invoke the Fifth Amendment.  
11 Q. Isn't it true, sir, that you have in  
12 fact received this document sent to Dabir  
13 International Limited attention Mr. David  
14 Guggenheim?  
15 A. I invoke my Fifth Amendment.  
16 Q. Mr. Birnbaum, why did Dabir  
17 International Limited use the term "David  
18 Guggenheim" in connection with its dealings with  
19 Proximity Petroleum?  
20 A. I invoke my Fifth Amendment.  
21 Q. Isn't it true, sir, that Dabir  
22 International used the term "David Guggenheim"  
23 in order to induce Proximity Petroleum into  
24 wanting to do business with Dabir International?  
25 A. I invoke my Fifth Amendment.

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1 Q. Isn't it true that Dabir International  
2 used the term "Guggenheim" with Proximity  
3 Petroleum in order to deceive Proximity  
4 Petroleum that Dabir International is connected  
5 with my client, sir?  
6 A. I invoke my Fifth Amendment.  
7 Q. Has Dabir International received any  
8 money from Proximity Petroleum, sir?  
9 A. I invoke my Fifth Amendment.  
10 Q. Has Dabir International sent any money  
11 to Proximity Petroleum?  
12 A. I invoke my Fifth Amendment.  
13 MR. MANEVITZ: The tape is almost up.  
14 MR. SHANAHAN: Two minutes.  
15 MS. WEEKS: Okay.  
16 Q. Mr. Birnbaum, I'm now going to give  
17 you what has been marked as Exhibit 15 to Dabir  
18 International's deposition.  
19 (Exhibit 15 marked)  
20 Q. This document is titled "Irrevocable  
21 Confirmed Purchase Order" on letterhead reading  
22 "Proximity Petroleum International Hong Kong  
23 Limited" dated December 16, 2010.  
24 Have you seen this document before,  
25 sir?

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1 A. I invoke my Fifth Amendment.  
2 Q. Mr. Birnbaum, this document is  
3 addressed to Dabir International Limited  
4 attention Mr. David Guggenheim, chairman. Do  
5 you see that portion of the document, sir?  
6 A. I invoke my Fifth Amendment.  
7 Q. Did Dabir International receive this  
8 document?  
9 A. I invoke my Fifth Amendment.  
10 Q. Did Dabir International request that  
11 Proximity Petroleum prepare this document?  
12 A. I invoke my Fifth Amendment.  
13 Q. Why did Dabir International use the  
14 term "David Guggenheim" in its dealings with  
15 Proximity Petroleum, sir, as shown in this  
16 document?  
17 A. I invoke my Fifth Amendment.  
18 Q. Isn't it true, sir, that Dabir  
19 International has used the term "David  
20 Guggenheim" in connection with its dealings with  
21 Proximity Petroleum to mislead that company into  
22 thinking that Dabir International has a  
23 connection with my clients?  
24 A. I invoke my Fifth Amendment.  
25 THE VIDEOGRAPHER: This ends tape  
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1 number two, we're off the record at 1:09.

2 (Discussion off the record)

3 (Luncheon recess)

4 THE VIDEOGRAPHER: This begins tape  
5 number three in the 30(b)(6) deposition of David  
6 Birnbaum for Dabir International. We're on the  
7 record at 2:16.

8 BY MS. WEEKS:

9 Q. Mr. Birnbaum, has Dabir International  
10 entered into any agreement with any person that  
11 was signed with the name David B. Guggenheim?

12 A. I invoke my Fifth Amendment.

13 Q. Have you signed any contracts,  
14 Mr. Birnbaum, on behalf of Dabir International  
15 using the name David Birnbaum?

16 A. I want to invoke my Fifth Amendment.

17 Q. Isn't it true, sir, that you have in  
18 fact signed contracts on behalf of Dabir  
19 International using the name David B.  
20 Guggenheim?

21 A. I invoke my Fifth Amendment.

22 Q. Mr. Birnbaum, has anyone ever  
23 communicated to Dabir the mistaken belief that  
24 Dabir is connected to my clients Guggenheim  
25 Capital and Guggenheim Partners?

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- 1 A. I invoke my Fifth Amendment.  
2 Q. Isn't it true that persons have  
3 communicated to Dabir a mistaken belief that  
4 Dabir is associated with my clients?  
5 A. I invoke my Fifth Amendment.  
6 Q. Isn't it true, Mr. Birnbaum, that  
7 persons have in fact been confused as to the  
8 relationship between Dabir International and my  
9 clients?  
10 A. I invoke my Fifth Amendment.  
11 Q. Isn't it true, Mr. Birnbaum, that  
12 Dabir International has intended for consumers  
13 to be confused concerning the relationship  
14 between Dabir and my clients?  
15 A. I invoke my Fifth Amendment.  
16 Q. Mr. Birnbaum, does Dabir International  
17 advertise?  
18 A. I invoke my Fifth Amendment.  
19 Q. Where does Dabir International  
20 advertise?  
21 A. I invoke my Fifth Amendment.  
22 Q. Does Dabir International use the term  
23 "Guggenheim" in its advertising?  
24 A. I invoke my Fifth Amendment.  
25 Q. Isn't it true that Dabir International  
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- 1 uses the term "Guggenheim" in advertising?  
2 A. I invoke my Fifth Amendment.  
3 Q. Isn't it true that Dabir International  
4 uses the term "Guggenheim" to advertise  
5 financial services?  
6 A. I invoke my Fifth Amendment.  
7 Q. Who has Dabir International sold  
8 products to?  
9 A. I invoke my Fifth Amendment.  
10 Q. Who has Dabir International sold  
11 services to?  
12 A. I invoke my Fifth Amendment.  
13 Q. What types of consumer does Dabir  
14 International attempt to sell products or  
15 services to?  
16 A. I invoke my Fifth Amendment.  
17 Q. Isn't it true, sir, that Dabir  
18 international intends to sell services to  
19 persons interested in financial services?  
20 A. I invoke my Fifth Amendment.  
21 Q. Has Dabir International ever employed  
22 defendant Catarina Pietra Toumei?  
23 A. I invoke my Fifth Amendment.  
24 Q. Has Dabir International ever paid  
25 money to defendant Catarina Pietra Toumei?

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- 1 A. I invoke my Fifth Amendment.  
2 Q. Isn't it true, sir, that Dabir  
3 International has in fact paid money to Catarina  
4 Pietra Toumei?  
5 A. I invoke my Fifth Amendment.  
6 Q. Has Dabir International ever employed  
7 Vladimir Zuravel?  
8 A. I invoke my Fifth Amendment.  
9 Q. Has Dabir International ever paid  
10 money to Vladimir Zuravel?  
11 A. I invoke my Fifth Amendment.  
12 Q. Isn't it true that Dabir International  
13 has in fact paid moneys to Vladimir Zuravel?  
14 A. I invoke my Fifth Amendment.  
15 Q. Has Dabir International ever employed  
16 Eli Pichel?  
17 A. I invoke my Fifth Amendment.  
18 Q. Has Dabir International ever paid Eli  
19 Pichel any money?  
20 A. I invoke my Fifth Amendment.  
21 Q. Isn't it true, sir, that Dabir  
22 International has in fact paid Eli Pichel money?  
23 A. I invoke my Fifth Amendment.  
24 Q. Is Miriam Birnbaum employed by Dabir  
25 International?

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- 1 A. I invoke my Fifth Amendment.
- 2 Q. Has she ever been?
- 3 A. I invoke my Fifth Amendment.
- 4 Q. Has Miriam Birnbaum ever been paid
- 5 money from Dabir International?
- 6 A. I invoke my Fifth Amendment.
- 7 Q. Isn't it true, sir, that Miriam
- 8 Birnbaum has in fact been paid money by Dabir
- 9 International?
- 10 A. I invoke my Fifth Amendment.
- 11 Q. Does Dabir International have any
- 12 marketing plans?
- 13 A. I invoke my Fifth Amendment.
- 14 Q. Does it have any business plans?
- 15 A. I invoke my Fifth Amendment.
- 16 Q. Does Dabir International keep notes of
- 17 corporate meetings?
- 18 A. I invoke my Fifth Amendment.
- 19 Q. Does Dabir International keep records
- 20 of outgoing correspondence?
- 21 A. I invoke my Fifth Amendment.
- 22 Q. Does Dabir International keep records
- 23 of incoming correspondence?
- 24 A. I invoke my Fifth Amendment.
- 25 Q. Does Dabir International keep records

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- 1 of its bank accounts?  
2 A. I invoke my Fifth Amendment.  
3 Q. Does Dabir International keep records  
4 of its costs related to offering goods or  
5 services?  
6 A. I invoke my Fifth Amendment.  
7 Q. Does Dabir International keep records  
8 concerning its income related to offering  
9 products or services?  
10 A. I invoke my Fifth Amendment.  
11 Q. How does Dabir sell its products?  
12 A. I invoke my Fifth Amendment.  
13 Q. How does Dabir sell its services?  
14 A. I invoke my Fifth Amendment.  
15 Q. Does Dabir use brokers or  
16 intermediaries?  
17 A. I invoke my Fifth Amendment.  
18 Q. Can you tell me the names of brokers  
19 or intermediaries that Dabir has used?  
20 A. I invoke my Fifth Amendment.  
21 Q. Has Dabir ever sent e-mails to  
22 potential customers?  
23 A. I invoke my Fifth Amendment.  
24 Q. Has Dabir ever sent documents through  
25 the mails to potential customers?

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1 A. I invoke my Fifth Amendment.  
2 Q. Has Dabir ever entered into any joint  
3 venture agreement?  
4 A. I invoke my Fifth Amendment.  
5 Q. Has Dabir ever entered into any  
6 distribution agreement?  
7 A. I invoke my Fifth Amendment.  
8 Q. Has Dabir ever entered into any  
9 license agreement?  
10 A. I invoke my Fifth Amendment.  
11 Q. Mr. Birnbaum, I'm now going to give  
12 you what has been marked Exhibit 16 to the  
13 deposition of Dabir International.  
14 (Exhibit 16 marked)  
15 Q. The first page of this document states  
16 that it is a presentation to Dabir International  
17 and Petro Lux Incorporated.  
18 Do you recognize this document, sir?  
19 A. I invoke my Fifth Amendment.  
20 Q. The front page of this document also  
21 states that this presentation is written and  
22 developed by CNF Commodities Group by Joel F.  
23 Costonis, principal, on January 16, 2011.  
24 Do you see that portion of the  
25 document, sir?

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1 A. I invoke my Fifth Amendment.  
2 Q. Has Dabir International entered into  
3 any relationship with CNF Commodities Group?  
4 A. I invoke my Fifth Amendment.  
5 Q. Has Dabir International entered into  
6 any business relationship with Joel Costonis?  
7 A. I invoke my Fifth Amendment.  
8 Q. The second page of this document,  
9 Mr. Birnbaum, explains a joint venture between  
10 Petro Lux and Dabir International for the  
11 purchase and resale of petroleum.  
12 Do you see that portion of the  
13 document, sir? Second page of this exhibit? Do  
14 you see that portion, sir?  
15 A. I invoke my Fifth Amendment.  
16 Q. Can you explain to me the joint  
17 venture between Petro Lux and Dabir  
18 International Limited?  
19 A. I invoke my Fifth Amendment.  
20 Q. Mr. Birnbaum, on page two that we're  
21 looking at, the first whereas clause about  
22 halfway down the page, states that: Whereas  
23 both parties are engaged in the petroleum trade  
24 industry.  
25 Is Dabir International engaged in the

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1 petroleum trade industry?  
2 A. I invoke my Fifth Amendment.  
3 Q. Isn't it true, sir, that Dabir  
4 International attempts to enter into investments  
5 relating to petroleum and oil?  
6 A. I invoke my Fifth Amendment.  
7 Q. On page four of this document, sir,  
8 near Article III, which is titled "Financial,"  
9 there are sections indicating how the parties  
10 will make payment under this joint venture.  
11 Section 3.03 and 3.04 mention Dabir. It appears  
12 that Dabir is referenced as the purchaser in  
13 this agreement.  
14 Do you see this part of the agreement,  
15 sir? Page four. Under the heading "Financial."  
16 Can you explain to me the payment  
17 terms contemplated by that portion of the  
18 document, sir?  
19 A. I omit the Fifth Amendment.  
20 Q. Has Dabir International made any  
21 payments to PLI pursuant to this agreement, sir?  
22 A. I invoke my Fifth Amendment.  
23 Q. In Section 3.04 of that same document,  
24 the last sentence states that: Profits from the  
25 deal will be shared at a rate to be agreed.

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1 Has Dabir International received any  
2 profits from this agreement, sir?  
3 A. I invoke my Fifth Amendment.  
4 Q. Can you tell me what profits Dabir  
5 International has received under this agreement?  
6 A. I invoke my Fifth Amendment.  
7 Q. On page five of this document, sir,  
8 under Article VIII, under the title "Projected  
9 Sales and Methods of Distribution," Section 8.01  
10 states that all parties involved have more than  
11 enough exit buyers and multitudes of delivery  
12 avenues.  
13 Do you see that portion of the  
14 document, sir? It is page five under the heading  
15 "Projected Sales and Methods of Distribution."  
16 Are you indicating that you do see  
17 that portion, sir?  
18 A. I omit the Fifth Amendment.  
19 Q. Mr. Birnbaum, can you tell me who  
20 Dabir International's exit buyers are with  
21 respect to this transaction?  
22 A. I invoke my Fifth Amendment.  
23 Q. Mr. Birnbaum, the very last page of  
24 this document is page seven, it is the signature  
25 page. The first areas for signature is

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1 designated for Petro Lux Incorporated, and the  
2 second section for signatures states: As  
3 recorded with my signature below on behalf of  
4 Dabir International Limited, I, Mr. David  
5 Guggenheim, signify our agreement, etc.  
6 Do you see that portion of the  
7 document?  
8 A. Ah, okay. I omit the Fifth Amendment.  
9 I invoke the Fifth Amendment.  
10 Q. Has Dabir International Limited  
11 indicated its acceptance of this joint venture  
12 agreement to PLI, sir?  
13 A. I -- I invoke my Fifth Amendment.  
14 Q. Is Dabir International Limited using  
15 the name Mr. David Guggenheim to signify its  
16 acceptance to the terms in this agreement?  
17 A. I invoke my Fifth Amendment.  
18 Q. Isn't it true, sir, with respect to  
19 this joint venture agreement with Dabir  
20 International and CNF Commodities, Dabir  
21 International has used the name Mr. David  
22 Guggenheim?  
23 A. I invoke my Fifth Amendment.  
24 Q. This document is dated Sunday,  
25 January 16, 2001, on the last page. Do you see

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- 1 that portion, sir?
- 2 A. I invoke my Fifth Amendment.
- 3 Q. Isn't it true that Dabir International
- 4 engaged in discussions with CNF Commodities
- 5 Group for this joint venture on or about
- 6 January 2011?
- 7 Sir, isn't it true this lawsuit was
- 8 filed in November 2010?
- 9 A. I invoke my Fifth Amendment.
- 10 Q. Mr. Birnbaum, was this document that's
- 11 marked as Exhibit 16 prepared with Dabir
- 12 International's authorization?
- 13 A. I invoke my Fifth Amendment.
- 14 Q. Isn't true that Dabir International
- 15 solicited this joint venture agreement in the
- 16 name of Mr. David Guggenheim as the signatory
- 17 for Dabir International?
- 18 A. I invoke my Fifth Amendment.
- 19 Q. Mr. Birnbaum, is Dabir International
- 20 aware that a preliminary injunction was entered
- 21 in this case in November 2010?
- 22 A. I invoke my Fifth Amendment.
- 23 Q. Is Dabir International aware that the
- 24 preliminary injunction entered in this case
- 25 prohibits you, Mr. David Birnbaum, from using

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1 "Guggenheim" in any form?  
2 A. I invoke my Fifth Amendment.  
3 Q. Isn't it true, sir, that Dabir  
4 International acknowledges that the date of the  
5 joint venture agreement marked as Exhibit 16 was  
6 January 2011?  
7 A. I invoke my Fifth Amendment.  
8 THE WITNESS: I have to -- can I talk  
9 for a moment because I would like to ask  
10 something.  
11 MR. MANEVITZ: Can we go off the  
12 record for a minute.  
13 MS. WEEKS: Sure.  
14 THE VIDEOGRAPHER: We're off the  
15 record at 2:33.  
16 (Discussion off the record)  
17 THE VIDEOGRAPHER: Back on the record  
18 at 2:36.  
19 BY MS. WEEKS:  
20 Q. Mr. Birnbaum, I'm going to give you an  
21 exhibit that has been marked Exhibit 17 to  
22 Dabir's deposition.  
23 (Exhibit 17 marked)  
24 Q. This document on the front page is  
25 titled "Presentation to Dabir International and  
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13F3GUGD

BIRNBAUM

1 Proximity Petroleum International HK Limited of  
2 a Joint Venture Agreement, written and developed  
3 by CNF Commodities Group, Joel F. Costonis,  
4 principal, dated February 11, 2011."

5 Do you see that portion of the  
6 document, sir?

7 A. I invoke my Fifth Amendment.

8 Q. Wasn't this document prepared for the  
9 review of Dabir International?

10 A. I invoke my Fifth Amendment.

11 Q. Didn't Dabir International solicit the  
12 preparation of this document, sir?

13 A. I invoke my Fifth Amendment.

14 Q. On page two of this document, the top  
15 reads Joint Venture Agreement. And the first  
16 paragraph explains that the joint venture is  
17 being engaged in by CNF Commodities Group, Dabir  
18 International with an office at Ocean Parkway,  
19 Brooklyn, New York, and Proximity Petroleum  
20 International HK with an office in Zurich,  
21 Switzerland.

22 Do you see that portion the document,  
23 sir?

24 A. I invoke my Fifth Amendment.

25 Q. Who is Proximity Petroleum HK Limited?  
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BIRNBAUM

- 1 A. I invoke my Fifth Amendment.  
2 Q. Is Proximity Petroleum International  
3 HK Limited an affiliate of Dabir international?  
4 A. I invoke my Fifth Amendment.  
5 Q. Mr. Birnbaum, are you an officer of  
6 Proximity Petroleum International HK Limited?  
7 A. I invoke my Fifth Amendment.  
8 Q. Do you work for that entity?  
9 A. I invoke my Fifth Amendment.  
10 Q. Are you engaged by that entity as an  
11 independent consultant in any manner?  
12 A. I invoke my Fifth Amendment.  
13 Q. Also on page two of this exhibit, sir,  
14 second paragraph reads that this is a  
15 non-exclusive joint venture being established to  
16 establish the procurement of petroleum products  
17 for resale.  
18 Did Dabir International Limited enter  
19 into this agreement to facilitate the procurement  
20 of petroleum products for resale?  
21 A. I invoke my Fifth Amendment.  
22 Q. Sir, on page four of this document,  
23 the last page of this document, and in the bold  
24 print where there are signature portions, the  
25 first -- the content before the first signature

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1 line reads this contract is signed by CNF  
2 Commodities Group on February 11, 2011.  
3 Underneath that portion it reads this contract  
4 is signed by Dabir International.  
5 Do you see that portion, sir?  
6 A. I invoke my Fifth Amendment.  
7 Q. Underneath the text that reads this  
8 contract is signed by Dabir International, there  
9 is a signature line. Underneath the line it  
10 states Mr. David Guggenheim, managing director,  
11 Proximity Petroleum International HK Limited.  
12 Do you see that section, sir?  
13 A. I invoke my Fifth Amendment.  
14 Q. Did you intend to sign this document,  
15 sir, on behalf of Dabir International?  
16 A. I invoke my Fifth Amendment.  
17 Q. Did you, using the name Mr. David  
18 Guggenheim, intend to sign this document on  
19 behalf of Proximity Petroleum International?  
20 A. I invoke my Fifth Amendment.  
21 Q. Isn't it true, sir, that Dabir  
22 International used the name "Mr. David  
23 Guggenheim" in connection with this document in  
24 order to induce the other party to enter into a  
25 transaction?

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BIRNBAUM

1 A. I invoke my Fifth Amendment.

2 Q. Can you explain why Dabir

3 International Limited used the name Mr. David  
4 Guggenheim with respect to this transaction?

5 A. I invoke my Fifth Amendment.

6 Q. Mr. Birnbaum, did Dabir International  
7 Limited pay any money in connection with this  
8 agreement that's been marked as Exhibit 17?

9 A. I invoke my Fifth Amendment.

10 Q. Did Dabir International receive any  
11 money in connection with the agreement that's  
12 been marked Exhibit 17?

13 A. I invoke my Fifth Amendment.

14 Q. Mr. Birnbaum, I'm now going to give  
15 you what has been marked as Exhibit 18 to the  
16 deposition of Dabir International.

17 (Exhibit 18 marked)

18 Q. This document is dated February 22,  
19 2011. Do you recognize this document, sir?

20 A. I invoke my Fifth Amendment.

21 Q. This document is titled "Irrevocable  
22 Corporate Purchase Order." On the first page it  
23 explains that Mr. Joel Costonis is acting on  
24 behalf of the joint venture established between  
25 Proximity Petroleum International Hong Kong

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13F3GUGD BIRNBAUM

1 Limited and Dabir International.

2 Do you see that portion of the

3 document, sir?

4 A. I invoke my Fifth Amendment.

5 Q. Mr. Birnbaum, was the joint venture in  
6 fact established between Proximity Petroleum  
7 International Hong Kong Limited and Dabir  
8 International?

9 A. I invoke my Fifth Amendment.

10 Q. Isn't it true that Dabir International  
11 authorized the preparation of this document for  
12 that joint venture?

13 A. I invoke my Fifth Amendment.

14 Q. Mr. Birnbaum, this document at the top  
15 represents that the joint venture presents this  
16 purchase order to confirm readiness to purchase  
17 the following commodity of the Russian  
18 Federation. And underneath that sentence there  
19 is a description of -- I believe it's gas oil.

20 Do you see that portion of the  
21 document?

22 A. I invoke the Fifth Amendment.

23 Q. Did Dabir International in fact  
24 purchase oil from the Russian Federation?

25 A. I invoke my Fifth Amendment.

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BIRNBAUM

1 Q. Isn't it true that Dabir International  
2 has used the term "Guggenheim" in connection  
3 with this contemplated purchase of oil from the  
4 Russian Federation?

5 A. I invoke my Fifth Amendment.

6 Q. Mr. Birnbaum, I'm now going to hand  
7 you what's been marked as Exhibit 19 to the  
8 deposition of Dabir International.

9 (Exhibit 19 marked)

10 Q. This is a one-page document dated  
11 January 16, 2010, at the bottom of the document.  
12 Do you recognize this document, sir?

13 A. I invoke my Fifth Amendment.

14 Q. This document appears untitled, but  
15 first sentence states: Note: Agreement covers  
16 any transactions entered into by the undersigned  
17 for a period of 10 years from the date of this  
18 agreement referred to as PLIDabirJV.

19 Do you see that portion of the  
20 document, sir? The very top first sentence.

21 A. What is the question?

22 Q. Do you see that portion of the  
23 document that I just read?

24 A. I omit my Fifth Amendment.

25 Q. Sir, can you explain to me what  
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1 PLIDabirJV stands for?

2 A. I omit the Fifth.

3 Q. Doesn't that phrase stand for a joint  
4 venture that was established between PLI and  
5 Dabir International Limited?

6 A. I omit the Fifth.

7 MR. MANEVITZ: I'm sorry. I don't  
8 hear what you are saying.

9 THE WITNESS: The same. I omit my  
10 Fifth Amendment.

11 MR. MANEVITZ: You omit your Fifth  
12 Amendment.

13 Q. Mr. Birnbaum, at the bottom of this  
14 document, there are spaces for signatures.  
15 There are two spaces. One of the spaces reads  
16 Mr. David Guggenheim personally and on behalf of  
17 Dabir International Limited.

18 Do you see that section of the  
19 document, sir?

20 A. I invoke my Fifth Amendment.

21 Q. The other signature portion appears to  
22 be signed by Mr. Joel Costonis on behalf of CNF  
23 Commodities Group. Do you see that portion of  
24 the document?

25 A. I invoke my Fifth Amendment.

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BIRNBAUM

1 Q. Has Dabir International Limited used  
2 the term "David Guggenheim" in dealings with  
3 Mr. Joel Costonis of CNF Commodities Group?

4 A. I invoke my Fifth Amendment.

5 Q. Isn't it true that Dabir International  
6 has used the term "David Guggenheim" in  
7 connection with representations made to Mr. Joel  
8 Costonis of the CNF Commodities Group?

9 A. I invoke my Fifth Amendment.

10 Q. Mr. Birnbaum, why didn't Dabir  
11 International Limited use the name David  
12 Birnbaum with respect to the signature section  
13 of this document?

14 A. I invoke my Fifth Amendment.

15 Q. Isn't it true, sir, that Dabir  
16 International Limited did not use the name David  
17 Birnbaum because it wanted to trade on the good  
18 will of the term "Guggenheim" that is associated  
19 with my clients?

20 A. I invoke my Fifth Amendment.

21 Q. Mr. Birnbaum, who is Joel Costonis?

22 A. I invoke my Fifth Amendment.

23 Q. Isn't it true that Dabir International  
24 has been engaged in discussions with Mr. Joel  
25 Costonis concerning proposed transactions

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BIRNBAUM

1 involving oil?  
2 A. I invoke my Fifth Amendment.  
3 Q. Isn't it true that you have identified  
4 yourself as David Guggenheim in your  
5 interactions with Joel Costonis from the CNF  
6 Commodities Group?  
7 A. I invoke my Fifth Amendment.  
8 Q. Mr. Birnbaum, has Dabir International  
9 used the term "David Guggenheim" in its dealings  
10 with Joel Costonis and the CNF Commodities  
11 Group?  
12 A. I invoke my Fifth Amendment.  
13 Q. Has Dabir International represented  
14 that its principal is David Guggenheim to Joel  
15 Costonis and the CNF Commodities Group?  
16 A. I invoke my Fifth Amendment.  
17 Q. Isn't it true, sir, that Dabir  
18 International has never identified its principal  
19 to Mr. Joel Costonis and the CNF Commodities  
20 Group as Mr. David Birnbaum?  
21 A. I invoke my Fifth Amendment.  
22 Q. Mr. Birnbaum, I'm now going to hand  
23 you what has been marked as Exhibit 20 to Dabir  
24 International's deposition.  
25 (Exhibit 20 marked)

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BIRNBAUM

1 Q. Mr. Birnbaum, this document appears to  
2 be a contract of some sort that's several pages  
3 long. Have you ever seen it before?

4 A. I omit the Fifth.

5 Q. Is Dabir International familiar with  
6 this document?

7 A. I omit the Fifth.

8 Q. Mr. Birnbaum, do you see the portion  
9 of the document on page one that refers to Dabir  
10 International on the right-hand side of the  
11 page?

12 A. I invoke the Fifth Amendment.

13 Q. Dabir International is referred to in  
14 this document as a buyer. Can you tell me what  
15 Dabir International bought through this  
16 agreement?

17 A. I invoke my Fifth Amendment.

18 Q. About midway down the first page of  
19 this document, the document represents that  
20 buyer has purchased diesel gas oil.

21 Sorry, Mr. Birnbaum. This document on  
22 the first page represents that Dabir  
23 International as buyer has purchased diesel gas  
24 oil.

25 Do you see that portion of the  
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BIRNBAUM

1 document?  
2 A. I invoke my Fifth Amendment.  
3 Q. Mr. Birnbaum, are you asserting the  
4 Fifth Amendment on behalf of yourself personally  
5 as Mr. David Birnbaum or on behalf of Dabir  
6 International?  
7 A. I invoke my Fifth Amendment.  
8 Q. Mr. Birnbaum, has Dabir International  
9 purchased diesel gas oil as stated in this  
10 agreement?  
11 A. I invoke my Fifth Amendment.  
12 Q. Mr. Birnbaum, are you asserting the  
13 Fifth Amendment on behalf of yourself personally  
14 or on behalf of Dabir International Limited?  
15 A. I invoke my Fifth Amendment.  
16 Q. Mr. Birnbaum, throughout the  
17 deposition today of Dabir International, you've  
18 made many objections based on an asserted Fifth  
19 Amendment privilege. Can you tell me if any of  
20 those objections have been made on behalf of  
21 Dabir International?  
22 A. I invoke my Fifth Amendment.  
23 Q. Have you made any of those objections  
24 on behalf of yourself personally as Mr. David  
25 Birnbaum?

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BIRNBAUM

1 A. I invoke my Fifth Amendment.

2 Q. Mr. Birnbaum, what has Dabir  
3 International's involvement been with this  
4 contract that has been marked as Exhibit 20?

5 A. I invoke my Fifth Amendment.

6 Q. Mr. Birnbaum, page three of this  
7 document that's been marked as Exhibit 20 in  
8 Section 2.4 states that the first delivery of  
9 the goods is January 2011. Do you see this  
10 portion of the document?

11 A. I invoke the Fifth Amendment.

12 Q. Did Dabir International receive any  
13 goods in January 2011?

14 A. I invoke my Fifth Amendment.

15 Q. Did Dabir International receive any  
16 diesel gas oil in January 2011?

17 A. I invoke my Fifth Amendment.

18 Q. Mr. Birnbaum, directing you to page 13  
19 of this document, the pages are not numbered but  
20 feel free to take time to count to 13. The top  
21 of that page reads like the rest of the pages of  
22 this document NEFT oil and gas at the top and it  
23 lists an address in Moscow, Russian Federation  
24 for that entity. And the specific page I'm  
25 looking at that I'd like you to review

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1 underneath that company designation it states  
2 refinery name.  
3 MR. MANEVITZ: Sorry, we are on the  
4 wrong page.  
5 Q. Do you see the page I'm pointing to?  
6 MR. MANEVITZ: Let me see.  
7 MS. WEEKS: I believe that's it, yes.  
8 MR. MANEVITZ: That looks like the  
9 one.  
10 Q. Do you see on the right-hand corner of  
11 this page, sir, it reads banking coordinates?  
12 A. I invoke my Fifth Amendment.  
13 Q. Underneath banking coordinates in  
14 Section 15.1 it states buyer's bank. Do you see  
15 that portion, sir?  
16 A. I invoke my Fifth Amendment.  
17 Q. Underneath that section, it reads bank  
18 name Guggenheim and/or UBS Zurich. Do you see  
19 that portion, sir?  
20 A. I invoke my Fifth Amendment.  
21 Q. Underneath bank name it states account  
22 name, Dabir International. Do you see that  
23 portion, sir?  
24 A. I invoke my Fifth Amendment.  
25 Q. Does this document indicate that Dabir  
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BIRNBAUM

- 1 International's bank name is Guggenheim?  
2 A. I invoke my Fifth Amendment.  
3 Q. Does this document indicate that Dabir  
4 International's bank is UBS Zurich?  
5 A. I invoke my Fifth Amendment.  
6 Q. Why did Dabir International indicate  
7 that its bank name for this document is  
8 Guggenheim?  
9 A. I invoke my Fifth Amendment.  
10 Q. Directing your attention to the next  
11 page, Mr. Birnbaum, which I believe is page 14.  
12 MR. MANEVITZ: 16.  
13 MS. WEEKS: Thank you, 16.  
14 MR. MANEVITZ: No, you might be right,  
15 14. Sorry.  
16 MS. WEEKS: No problem.  
17 Q. Do you see the portion of the document  
18 at the top where it says buyer Dabir  
19 International, sir?  
20 A. I invoke my Fifth Amendment.  
21 Q. Underneath that statement the document  
22 indicates that Dabir International is  
23 represented by David Dabir. Do you see that  
24 portion, sir?  
25 A. I invoke my Fifth Amendment.

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BIRNBAUM

1 Q. Who is David Dabir?

2 A. I invoke my Fifth Amendment.

3 Q. This document indicates that David  
4 Dabir has the title of president. Do you see  
5 that portion of the document?

6 A. I invoke my Fifth Amendment.

7 Q. Is David Dabir president of Dabir  
8 International?

9 A. I invoke my Fifth Amendment.

10 Q. Why did Dabir International use the  
11 name David Dabir?

12 A. I invoke my Fifth Amendment.

13 Q. Why didn't Dabir International use the  
14 name David Guggenheim?

15 A. I invoke my Fifth Amendment.

16 Q. Why didn't Dabir International use the  
17 name David Birnbaum?

18 A. I invoke my Fifth Amendment.

19 Q. Mr. Birnbaum, who is NEFT Oil and Gas?  
20 Is Dabir International familiar with the company  
21 whose name is displayed at the top of this  
22 exhibit?

23 A. I invoke my Fifth Amendment.

24 Q. Mr. Birnbaum, are you invoking a Fifth  
25 Amendment on behalf of Dabir International or on  
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1       behalf of yourself personally?

2           A.     I invoke the Fifth Amendment.

3           Q.     Mr. Birnbaum, has Dabir International  
4       filed any trademark applications with the U.S.  
5       patent and trademark office?

6           A.     I invoke my Fifth Amendment.

7           Q.     Mr. Birnbaum, when you invoke your  
8       Fifth Amendment without specifying for whom you  
9       are invoking it, I am going to assume that you  
10      are invoking it for Dabir International. Is  
11      that correct?

12          A.     I invoke my Fifth Amendment.

13          Q.     So I am going to go ahead and assume  
14      that all of your objections based on the Fifth  
15      Amendment --

16                 MR. MANEVITZ: Your assumption as to  
17      that doesn't really speak to the legal validity  
18      of that assumption.

19                 MS. WEEKS: If Mr. Birnbaum would like  
20      to correct me, he's welcome to do so.

21          Q.     Mr. Birnbaum, can you answer my  
22      question, please?

23                 MR. MANEVITZ: You can make your  
24      assumptions as you wish. I think any Court will  
25      see right through that.

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BIRNBAUM

1 MS. WEEKS: There is obviously no  
2 Fifth Amendment implications for Mr. Birnbaum  
3 simply identifying for whom he is asserting  
4 privilege. Do you know of any crime that could  
5 be implicated?

6 Q. Mr. Birnbaum, could you answer my  
7 question. My question to you is when you assert  
8 the Fifth Amendment right against  
9 self-incrimination, I am going to assume that  
10 you are asserting it on behalf of Dabir  
11 International, the company who is being deposed  
12 here today, and for whom you have been  
13 designated the corporate representative, unless  
14 you indicate otherwise.

15 Would you like to correct me on that?

16 A. I invoke my Fifth Amendment.

17 MR. MANEVITZ: I would like to correct  
18 you on that, however. That's just an invalid  
19 assumption. I understand you're putting it on  
20 the record. I understand what you are going to  
21 do here.

22 MS. WEEKS: Mr. Manevitz, are you  
23 testifying on behalf of Dabir International  
24 Limited?

25 MR. MANEVITZ: I certainly am not.  
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BIRNBAUM

1 MS. WEEKS: I respectfully disagree  
2 with your opinion and we are going to keep  
3 moving on.  
4 MR. MANEVITZ: You're welcome to  
5 disagree with my opinion.  
6 Q. Mr. Birnbaum, isn't it true that Dabir  
7 International Limited has in fact applied to  
8 register a trademark with the U.S. patent and  
9 trademark office?  
10 A. I invoke my Fifth Amendment.  
11 Q. Mr. Birnbaum, I'm now handing you a  
12 document that has been marked as Exhibit 21 to  
13 the deposition of Dabir International.  
14 (Exhibit 21 marked)  
15 Q. This document shows an application  
16 made to the U.S. patent and trademark office for  
17 the mark Guggenheim with the serial number  
18 85186314. Do you recognize the pages that are  
19 making up this document?  
20 A. I invoke my Fifth Amendment.  
21 Q. Did Dabir International file the  
22 application that's reflected in this exhibit,  
23 sir?  
24 A. I invoke my Fifth Amendment.  
25 Q. On the second page of this exhibit,  
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BIRNBAUM

1 there is a field that states owner (applicant).

2 Do you see that portion of the document, sir?

3 A. I invoke my Fifth Amendment.

4 Q. Mr. Birnbaum, are you invoking your  
5 Fifth Amendment on behalf of Dabir International  
6 or yourself personally as Mr. David Birnbaum?

7 A. I invoke my Fifth Amendment.

8 Q. Mr. Birnbaum, next to the field marked  
9 owner, this trademark application reads Dabir  
10 International Limited, otherwise known as Dabir  
11 Limited Liability Company, Delaware, with an  
12 address of 525 Ocean Parkway, Brooklyn, New York  
13 11218.

14 Do you see that portion of this  
15 document, sir?

16 A. I invoke my Fifth Amendment.

17 Q. Is Dabir International Limited  
18 otherwise known as Dabir, D-a-b-i-r?

19 A. I invoke my Fifth Amendment.

20 Q. Is Dabir International Limited a  
21 limited liability company in Delaware, sir?

22 A. I invoke my Fifth Amendment.

23 Q. Isn't it true that Dabir International  
24 Limited is not in fact registered with the State  
25 of Delaware?

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BIRNBAUM

- 1 A. I invoke my Fifth Amendment.  
2 Q. Isn't it true that representing Dabir  
3 International Limited as a company based in  
4 Delaware, isn't it true that is a false  
5 statement made in this application, sir?  
6 A. I invoke my Fifth Amendment.  
7 Q. Turning to page three of this same  
8 exhibit, this document shows more of the  
9 application made to the U.S. patent and  
10 trademark office. Do you see the section that  
11 reads applicant information, sir?  
12 A. I invoke my Fifth Amendment.  
13 Q. Do you see the field that reads owner  
14 of mark and lists Dabir International Limited,  
15 sir?  
16 A. I invoke my Fifth Amendment.  
17 Q. Do you see the address information  
18 listed for Dabir International Limited as the  
19 applicant and owner of the applied for mark to  
20 be 525 Ocean Parkway, Brooklyn, New York 11218?  
21 A. I invoke my Fifth Amendment.  
22 Q. Isn't that the address for Dabir  
23 International Limited, sir?  
24 A. I invoke my Fifth Amendment.  
25 Q. Turning to the next page of this

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1 exhibit. There is a heading that states: Goods  
2 and/or services and basis information.  
3 Underneath it there are various services listed  
4 that this mark has been applied for. Do you see  
5 that section, sir? Begins with the words:  
6 Agencies for brokerage of securities trading in  
7 overseas markets -- excuse me -- overseas  
8 securities markets and of transactions on  
9 commission of overseas markets, etc.

10 Do you see that portion of the  
11 document?

12 A. I invoke my Fifth Amendment.

13 Q. Is it fair to say, sir, that the  
14 description of services under the applied for  
15 mark are financial and investment services?

16 A. I invoke my Fifth Amendment.

17 Q. Isn't it true that the applied for  
18 mark lists investment and financial services?

19 A. I invoke my Fifth Amendment.

20 Q. Directing your attention to the next  
21 page of this document. Do you see the field  
22 that states first use anywhere date? It is in  
23 the middle portion of the page under the heading  
24 filing basis.

25 Do you see the portion where it reads  
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1 first use anywhere date?  
2 A. I invoke my Fifth Amendment.  
3 Q. Mr. Birnbaum, do you see the statement  
4 submitted by the applicant for this mark that  
5 reads the first use anywhere date is at least as  
6 early as January 1st, 1970?  
7 A. I invoke my Fifth Amendment.  
8 Q. Has Dabir International been using the  
9 term "Guggenheim" since at least as early as  
10 January 1st, 1970?  
11 A. I invoke my Fifth Amendment.  
12 Q. Isn't it true, sir, that Dabir  
13 International Limited has not been using the  
14 term "Guggenheim" since at least as early as  
15 January 1st, 1970?  
16 A. I invoke my Fifth Amendment.  
17 Q. Mr. Birnbaum, on the same page of this  
18 exhibit, there is a field entitled specimen  
19 description. Do you see that portion? Do you  
20 see the portion of the --  
21 A. I invoke the Fifth Amendment.  
22 Q. Again, Mr. Birnbaum, are you invoking  
23 the Fifth Amendment on behalf of Dabir the  
24 deponent today or on behalf of yourself  
25 personally?

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BIRNBAUM

- 1 A. I invoke the Fifth Amendment.  
2 Q. Mr. Birnbaum, the statement submitted  
3 by applicant concerning the specimen description  
4 reads: Please see attached a photo of the  
5 actual bottle that is involved currently in  
6 commerce that has the Guggenheim name on it for  
7 our trademark application Guggenheim. This is  
8 an example of one of the many commerces that we  
9 have been involved in for over a decade using  
10 the Guggenheim name.  
11 Do you see that portion of the  
12 application, sir?  
13 A. I invoke my Fifth Amendment.  
14 Q. Did you write that description of the  
15 specimen submitted with this application?  
16 A. I invoke my Fifth Amendment.  
17 Q. Did you direct anyone else to write  
18 that description of the specimen submitted with  
19 this application?  
20 A. I invoke my Fifth Amendment.  
21 Q. Is Dabir International Limited  
22 currently using the term "Guggenheim" for the  
23 distribution of vodka?  
24 A. I invoke my Fifth Amendment.  
25 Q. Isn't it true, sir, that Dabir

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BIRNBAUM

- 1 International Limited, by filing this  
2 application, represented to the U.S. patent and  
3 trademark office that Dabir is using  
4 "Guggenheim" for vodka?  
5 A. I invoke my Fifth Amendment.  
6 Q. Isn't it true, sir, that by Dabir  
7 International submitting this application,  
8 trademark application, that Dabir is  
9 representing that it is currently using the term  
10 "Guggenheim" for financial services?  
11 A. I invoke my Fifth Amendment.  
12 Q. Pointing you to the next page of this  
13 exhibit, there is a listing stating  
14 correspondence information. Do you see that  
15 portion of the document?  
16 A. I invoke my Fifth Amendment.  
17 Q. The name of the correspondence is  
18 listed as Dabir International Limited. Do you  
19 see that portion, sir?  
20 A. I invoke my Fifth Amendment.  
21 Q. The address for the correspondence is  
22 listed as 525 Ocean Parkway, Brooklyn, New York  
23 11218. Do you see that portion of the document,  
24 sir?  
25 A. I invoke my Fifth Amendment.

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BIRNBAUM

- 1 Q. Isn't that Dabir International's  
2 address?  
3 A. I invoke my Fifth Amendment.  
4 Q. Didn't Dabir International submit this  
5 application to the U.S. patent and trademark  
6 office?  
7 A. I invoke my Fifth Amendment.  
8 Q. On that same page, Mr. Birnbaum, there  
9 is a heading entitled fee information. Do you  
10 see that portion of the document?  
11 A. I invoke my Fifth Amendment.  
12 Q. Do you see the portion of the document  
13 that states that a fee of \$325 was paid for this  
14 application?  
15 A. I invoke my Fifth Amendment.  
16 Q. Did Dabir International Limited pay  
17 \$325 for this application?  
18 A. I invoke my Fifth Amendment.  
19 Q. Isn't it true that Dabir International  
20 Limited did pay the \$325 for this application?  
21 A. I invoke my Fifth Amendment.  
22 Q. Did somebody pay \$325 for this  
23 application on behalf of Dabir International  
24 Limited?  
25 A. I invoke my Fifth Amendment.

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BIRNBAUM

- 1 Q. Isn't it true that somebody paid the  
2 \$325 on behalf of Dabir International Limited  
3 for this application?  
4 A. I invoke my Fifth Amendment.  
5 Q. Mr. Birnbaum, directing you about  
6 three or four pages past that one in the same  
7 exhibit, there is a photograph of a bottle. Do  
8 you see this photograph?  
9 Do you see the photograph, sir?  
10 A. I invoke my Fifth Amendment.  
11 Q. Is Dabir International Limited  
12 familiar with the bottle shown in this  
13 photograph?  
14 A. I invoke my Fifth Amendment.  
15 Q. This photograph is a picture of a  
16 vodka bottle reading Blat Vodka. It also  
17 contains the term "David B. Guggenheim." Do you  
18 see those words, sir?  
19 A. I invoke my Fifth Amendment.  
20 Q. Isn't it true that Dabir International  
21 Limited has engaged in discussions with Blat  
22 Vodka to distribute vodka in the U.S. using the  
23 term "Guggenheim"?  
24 A. I invoke my Fifth Amendment.  
25 Q. Isn't it true that Dabir International

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BIRNBAUM

- 1 Limited has falsely represented to Blat Vodka  
2 that it is connected to my clients Guggenheim  
3 Capital and Guggenheim Partners?  
4 A. I invoke my Fifth Amendment.  
5 Q. Isn't it true that Dabir International  
6 Limited is working with defendant Zuravel and  
7 defendant Toumei towards the distribution of  
8 Blat Vodka under the Guggenheim name in the  
9 United States?  
10 A. I invoke my Fifth Amendment.  
11 Q. Isn't it true that Dabir International  
12 Limited has named Ms. Toumei the head of  
13 marketing and promotions for the Blat Vodka  
14 under the Guggenheim name?  
15 A. I invoke my Fifth Amendment.  
16 Q. Isn't it true that Dabir International  
17 Limited has engaged Mr. Vladimir Zuravel to sell  
18 vodka under the Guggenheim name?  
19 A. I invoke my Fifth Amendment.  
20 Q. Isn't it true, Mr. Birnbaum, that you  
21 on behalf of Dabir International in your  
22 capacity as a principal of Dabir International  
23 have negotiated with Blat Vodka for the proposed  
24 distribution of vodka under the Guggenheim name?  
25 A. I invoke my Fifth Amendment.

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BIRNBAUM

- 1 Q. Isn't it true, Mr. Birnbaum, that you  
2 on behalf of Dabir International Limited falsely  
3 represented to Blat Vodka that Dabir  
4 International is connected to my clients  
5 Guggenheim Capital and Guggenheim Partners?  
6 A. I invoke my Fifth Amendment.  
7 Q. Mr. Birnbaum, directing your attention  
8 to the last two pages of this exhibit. The next  
9 to last page reads: Request for express  
10 abandonment. Do you see that portion of the  
11 document, sir?  
12 A. I invoke my Fifth Amendment.  
13 Q. This express abandonment of U.S.  
14 trademark application serial number 85186314 was  
15 made on January 13, 2011, and is signed by a  
16 Mr. Cohen. Is Dabir International Limited  
17 represented by Mr. Cohen?  
18 A. I invoke my Fifth Amendment.  
19 Q. Was Dabir International Limited ever  
20 represented by Mr. Cohen?  
21 A. I invoke my Fifth Amendment.  
22 Q. Why was this request for express  
23 abandonment file by Dabir International, sir?  
24 A. I invoke my Fifth Amendment.  
25 Q. Did the Court order Dabir

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BIRNBAUM

1 International to withdraw this application?  
2 A. I invoke my Fifth Amendment.  
3 Q. Isn't it true that the Court in this  
4 case ordered Dabir International Limited to  
5 withdraw this application?  
6 A. I invoke my Fifth Amendment.  
7 MR. SHANAHAN: Off the record.  
8 THE VIDEOGRAPHER: This ends tape  
9 number three. We're off the record at 3:17.  
10 (Discussion off the record)  
11 (Recess)  
12 THE VIDEOGRAPHER: This begins tape  
13 number four in the 30(b)(6) deposition of David  
14 Birnbaum for Dabir International. We are on the  
15 record at 3:40.  
16 BY MS. WEEKS:  
17 Q. Mr. Birnbaum, how long has Dabir  
18 International been in business?  
19 A. I invoke the Fifth Amendment.  
20 Q. Has Dabir International ever generated  
21 any revenue?  
22 A. I invoke the Fifth Amendment.  
23 Q. Has Dabir International ever turned a  
24 profit?  
25 A. I invoke the Fifth Amendment.  
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BIRNBAUM

- 1 Q. How long have principals, agents or  
2 employees of Dabir been using the term  
3 "Guggenheim"?  
4 A. I invoke the Fifth Amendment.  
5 Q. How long have principals, employees or  
6 agents of Dabir been using the term "Guggenheim"  
7 for financial services?  
8 A. I invoke the Fifth Amendment.  
9 Q. Who has signed federal tax returns on  
10 behalf of Dabir?  
11 A. I invoke the Fifth Amendment.  
12 Q. Who has signed state tax returns on  
13 behalf of Dabir?  
14 A. I invoke the Fifth Amendment.  
15 Q. Has Dabir ever filed a federal tax  
16 return using the name Birnbaum?  
17 A. I invoke the Fifth Amendment.  
18 Q. Has Dabir ever filed a state tax  
19 return using the name Birnbaum?  
20 A. I invoke the Fifth Amendment.  
21 Q. Has Dabir ever filed a federal tax  
22 return using the name Guggenheim?  
23 A. I invoke the Fifth Amendment.  
24 Q. Has Dabir ever filed a state tax  
25 return using the name Guggenheim?

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BIRNBAUM

- 1 A. I invoke the Fifth Amendment.  
2 Q. Has Dabir ever paid any money to  
3 Proximity Petroleum International Hong Kong  
4 Limited?  
5 A. I invoke Fifth Amendment.  
6 Q. Has Dabir ever received any money from  
7 Proximity Petroleum International Hong Kong  
8 Limited?  
9 A. I invoke the Fifth Amendment.  
10 Q. Is Proximity Petroleum International  
11 Hong Kong Limited a division of Dabir  
12 International?  
13 A. I invoke Fifth Amendment.  
14 Q. Has anyone ever objected to Dabir  
15 International Limited's use of the term  
16 "Guggenheim"?  
17 A. I invoke the Fifth Amendment.  
18 Q. Has Dabir International Limited ever  
19 objected to any other person's use of the term  
20 "Guggenheim"?  
21 A. I invoke the Fifth Amendment.  
22 Q. Has Dabir International Limited ever  
23 conducted a trademark search concerning the term  
24 "Guggenheim"?  
25 A. I invoke the Fifth Amendment.

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BIRNBAUM

- 1 Q. Has Dabir International Limited ever  
2 requested attorney advice concerning Dabir's use  
3 of the term "Guggenheim"?  
4 A. I invoke the Fifth Amendment.  
5 MR. MANEVITZ: I'm going to throw out  
6 an objection on attorney/client but he invoked.  
7 MS. WEEKS: I'm just asking if he  
8 asked for advice or not. I'm not asking the  
9 content. I am asking whether Dabir had  
10 requested advice but I'm not inquiring as to the  
11 content.  
12 MR. MANEVITZ: I understand.  
13 Q. Has Dabir International Limited ever  
14 sought permission from any person concerning  
15 Dabir's use of the term "Guggenheim"?  
16 A. I invoke the Fifth Amendment.  
17 Q. Has Dabir International ever licensed  
18 the term "Guggenheim" for another's use in  
19 business transactions?  
20 A. I invoke the Fifth Amendment.  
21 Q. Has Dabir International Limited ever  
22 objected to my client's use of the term  
23 "Guggenheim"?  
24 A. I invoke Fifth Amendment.  
25 Q. Has defendant Dabir International

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BIRNBAUM

1 Limited ever represented to any person that it  
2 is not affiliated with my clients Guggenheim  
3 Partners and Guggenheim Capital?  
4 A. I invoke the Fifth Amendment.  
5 Q. Are Dabir International Limited and  
6 Guggenheim Trust Company connected?  
7 A. I invoke the Fifth Amendment.  
8 Q. Is Guggenheim Trust Company an alias  
9 for Dabir International limited?  
10 A. I invoke the Fifth Amendment.  
11 Q. What was Dabir's revenue in 2010?  
12 A. I invoke Fifth Amendment.  
13 Q. How about 2009?  
14 A. I invoke the Fifth Amendment.  
15 Q. What was Dabir's revenue for any year  
16 since its incorporation?  
17 A. I invoke the Fifth Amendment.  
18 Q. Is Dabir International Limited ever  
19 been known by any other name other than Dabir  
20 International Limited?  
21 A. I invoke the Fifth Amendment.  
22 MS. WEEKS: Thank you, Mr. Birnbaum, I  
23 have no further questions for Dabir. I think we  
24 can adjourn for today.

25 THE VIDEOGRAPHER: This concludes  
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BIRNBAUM

today's proceedings. We're off the record at  
3:47.

\_\_\_\_\_  
DAVID

BIRNBAUM

Subscribed and sworn to  
before me this                      day  
of                      , 2011.

\_\_\_\_\_  
CERTIFICATE

STATE OF NEW YORK )

: Ss

COUNTY OF NEW YORK)

I, Rebecca Forman, a Registered Merit  
Reporter and Notary Public within and for the  
State of New York, do hereby certify:

That David Birnbaum, the witness whose  
deposition is hereinbefore set forth, was duly  
sworn by me and that such deposition is a true  
record of the testimony given by such witness.

I further certify that I am not  
related to any of the parties to this action by  
blood or marriage and that I am in no way  
interested in the outcome of this matter.

I further certify that neither the deponent nor a  
party requested a review of the transcript pursuant to Federal  
Rule of Civil Procedure 30(e) before the deposition was  
completed.

In witness whereof, I have hereunto  
set my hand this 17th day of March, 2011

\_\_\_\_\_  
REBECCA FORMAN, RMR

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